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BRADFORD FLOYD; DANNY MURRAY; DOMONIC DAPETTI; CHAD
DALHBERG

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CHELSEA, LLC, MARK RUSSO,
ALLEN LORETZ, IVAN SIMPSON,
individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

REGAL STONE, LTD., HANJIN
SHIPPING, CO., LTD., CONTI CAIRO
KG, NSB NEIDERELBE, SYNERGY
MARITIME, LTD. *In Personam*; M/V
Cosco Busan, their engines, tackle,
equipment, appurtenances, freights, and
cargo *In Rem*,

Defendants.

Case No. C-07-5800-SC
Purported related case
Case No. 7-5926 JL

OPPOSITION TO
ADMINISTRATIVE MOTION
TO CONSIDER WHETHER
CASES SHOULD BE RELATED
PURSUANT TO CIVIL L.R. 3-12
AND 7-11

COME NOW PLAINTIFFS SHOGREN LIVING TRUST; PATRICK DAVIS;

ROSE MARIE, INC.; STEPHEN MELZ; F/V GLADNIK, LLC; F/V MIDORI, LLC; F/V

CHARLIE D., LLC; F/V DONITA, LLC; BOB SILVA; GALE FORCE, INC.; F/V

INTREPID, INC.; BRADFORD FLOYD; DANNY MURRAY; DOMONIC DAPETTI;

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CHAD DALHBERG [hereinafter “*Individual* Plaintiffs”] in case no. 07-5926 JL and herby oppose the Administrative Motion to Consider Whether Cases Should be Related Pursuant to Civil L.R. 3-12 and 7-11 filed on December 3, 2007 in the above captioned case.. The *Individual* Plaintiffs contend that the following cases are not related as defined by Civil L.R. 3-12:

<u>CASE</u>	<u>CASE NO.</u>	<u>JUDGE ASSIGNED</u>	<u>FILED</u>
<i>Chelsea, LLC v. Regal Stone, et al.</i>	C-07-5800-SC	Hon. Samuel Conti	11/19/2007
<i>Shogren Living Trust, et al. v. Regal Stone, Ltd., Et al.</i>	07-5926-JL	Hon. James Larson	11/21/2007

Local Rule 3-12 states:

Definition of Related Cases. An action is related to another when:

(1) The actions concern substantially the same parties, property, transaction or event; and

(2) It appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different Judges

Although the accident hitting the bridge and causing a cessation to the Crab Fishing season is similar, the parties are different and the damages are different. Each individual fisherman has different damages, depending on their history of catch last year, size of vessel, number of crab pots, whether the vessel had to return to its home port instead of staying in San Francisco (i.e. some vessels returned to Crescent City), some lost all of their bait as they did not have adequate refrigeration to keep the crab bait for such a period of time. Further, the plaintiffs herein are “highliners” and catch more than the average fisherman, and therefore there is a danger if the damages were normed or average that Plaintiffs would lose money. As such the individual damages are different and would preclude this suit being subsumed into or coordinated with a class action suit.

1 The *Individual and Chelsea* actions arise out of the same accident involving the
 2 vessel *M/V COSCO BUSAN*; however, beyond this basis of the actions, the cases lack
 3 substantial similarities to be considered related. Additionally, the Individual Plaintiffs
 4 would be prejudiced by considering these cases related and transferring *Individual* to
 5 come before the Honorable Samuel Conti, because the different procedural nature of the
 6 two cases would cause undue delay in the *Individual* case.

7 1. *Chelsea* is a class action suit, whereas *Individual* is based on individual
 8 claims. Class action suits face a host of threshold questions and procedural issues that are
 9 not present in individual suits, as a result, class action suits run considerably longer. For
 10 example, it can take up to six months to certify a class. While the *Chelsea* class action
 11 suit is waiting to be certified, the *Individual* suit will be stayed, unnecessarily delayed,
 12 negatively impacting the *Individual* Plaintiffs' ability to prove their case as the subject
 13 incident becomes more remote in time. Evidence will be harder to obtain, and witnesses
 14 memories will fade. Furthermore, the plaintiffs themselves will suffer from a delay
 15 because they have loss a significant portion of their earnings for this year, and any delay
 16 will make it that much longer before they can obtain a recovery. The *Individual* action
 17 was specifically not filed as a class action in order to avoid delays associated with class
 18 action (notwithstanding that all the *Individual* Plaintiffs have different damages and may
 19 not be certified as a class at all). To relate the *Individual* action to *Chelsea* action would
 20 create unnecessary and prejudicial delays in the *Individual* case, especially during the
 21 class certification stage.

22 2. *Chelsea* and *Individual* face different jurisdictional issues. *Individual* is
 23 subject to admiralty and maritime jurisdiction pursuant to FRCP 9(h), 28 U.S.C. § 1333
 24 and the general maritime law of the United States. Where questions of jurisdiction to
 25 arise, either of the cases could be unnecessarily held up by the other.

26 3. The named Defendants in *Individual* are substantially different than those
 27 in *Chelsea*. Pilot John Cota and the vessel *M/V Cosco Busan* are named as defendants in
 28 *Individual*, but not in *Chelsea*.

4. *Individual* and *Chelsea* contain different causes of action.

Causes of Action in *Chelsea*:

1. Strict Liability;
2. Negligence;
3. Violation of the Unfair Competition Act, Cal. Bus & Prof. Code § 17200, *et seq.*;
4. Mandatory clean up program.

Causes of Action in *Individual* :

1. Strict Liability under California Government Code § 8670.56.5;
2. Strict Liability under 33 U.S.C. 2702;
3. Negligence against all defendants;
4. Negligence against John Cota.

5. *Individual* seeks discrete damages for each of its named Plaintiffs, while *Chelsea* seeks common damages across the class. The *Individual* Plaintiffs consist of individuals or corporations who have all suffered harm and losses unique to them and should be awarded damages bases on individual consideration. Since *Chelsea*, is a class action suit, damages are not calculated on an individual basis, and are not at all comparable to those damages sought in *Individual* .

For the foregoing reasons, the *Individual* Plaintiffs respectfully request that the Administrative Motion to Consider Whether Cases Should be Related Pursuant to Civil L.R. 3-12 and 7-11 filed by the Plaintiffs in *Chelsea* be denied with prejudice.

Dated: December 6, 2007

BIRNBERG & ASSOCIATES

By: /s/Cory Birnberg
Cory A. Birnberg
Attorney for Defendants